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IN THE SUPREME COURT

STATE OF ARIZONA

In the Matter of:)	
)	
PETITION TO AMEND THE)	
RULES OF FAMILY LAW)	Supreme Court No. R-12-_____
PROCEDURE)	(expedited consideration requested)
_____)	

Pursuant to Rule 28 of the Rules of the Arizona Supreme Court, David K. Byers, Administrative Director, Administrative Office of the Courts, respectfully petitions this Court to adopt the attached proposed amendments to the Rules of Family Law Procedure (RFLP), on an expedited basis in response to recent amendments to domestic relations statutes enacted through Senate Bill 1127 (Laws 2012, Chapter 309). The text of the proposed amendments is set out in the accompanying Appendix A.

I. Background and Purpose of the Proposed Rule Amendment. Senate Bill 1127 was passed and signed into law in the Second Regular Session of the Fiftieth Legislature (Ch. 322)(2012). The bill's effective date is January 1, 2013.

SB 1127 replaced the term “legal custody” with “legal decision-making,” and the terms “physical custody” and “parental visitation” with “parenting time.” The bill also limits the meaning of the term “visitation” to temporary physical custody by non-parents. These statutory amendments changed terminology, not rights or procedures and affected only chapter 4 of Title 25. The amendments did not change any references to custody and visitation in other chapters of Title 25 or in the provisions of Title 13 dealing with domestic violence. Therefore, it is very difficult if not impossible to sort through the RFLP rules which cover all of Title 25 to make conforming changes. It is likely a legislative fix is required and will be proposed in January, 2013.

As a temporary measure, petitioner proposes addition of a prefatory comment to the RFLP to describe the changes SB 1127 made, to inform attorneys and litigants that the terms replaced in the statute have not been replaced in the rules, and to clarify the effect of the change in terminology.

Other changes to RFLP in this petition are an amendment to Rule 24 and Rule 49 deleting a reference to a statute that SB 1127 repealed, an amendment to Rule 91(E) changing the statutory reference to conform to the changes made by SB 1127, and an amendment to Form 1 replacing “Parenting time by a non-parent” with “visitation” to address an inconsistency with the new terminology.

It is anticipated that, once the statutes are clarified, the standing State Bar Family Law Practice and Procedure Committee, which has primary responsibility for reviewing the workability of the relatively new RFLP rules, may propose detailed rule changes addressing statutory changes.

II. Pre-Petition Comments. The petition has not been circulated for pre-petition comments.

III. Effective Date of the Proposed Rule Amendment. The changes made by the underlying statutory amendments will become effective on January 1, 2013. The expedited adoption of the proposed amended rules is necessary to clarify in a general way how the new statutory terminology affects the RFLP in order to minimize confusion about the inconsistency in terminology.

Petitioner therefore requests expedited adoption of the proposed amended rules with an effective date of January 1, 2013, with a formal comment period to follow, as permitted by Supreme Court Rule 28(G).

RESPECTFULLY SUBMITTED this _____ day of _____ 2012.

By _____
David K. Byers, Administrative Director
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APPENDIX A

(language to be removed is shown in ~~strikethrough~~, new language is underlined)

[Insert before RFLP Rule 1]

Prefatory Comment to 2013 Amendments

SB 1127 (Laws 2012, Chapter 309) changed basic terminology used in Title 25, chapter 4, article 1. It did not change the same terminology used in other chapters of Title 25 to which these rules apply. Until this legislation can be clarified and any needed detailed conforming changes to these rules can be made, the term *legal custody* used in these rules shall be given the same meaning as *legal decision-making*, as defined by A.R.S. § 25-401 (3) and the terms *physical custody* and *parental visitation* used in these rules shall be given the same meaning as *parenting time* as defined by A.R.S. § 25-401 (5).

Rule 24. Pleadings Allowed

A. Petition. A party shall commence the following actions by filing a verified petition with the clerk of the superior court: Annulment (A.R.S. § 25-301), Dissolution (A.R.S. § 25-312), Legal Separation (A.R.S. § 25-313), Third Party Rights ~~Child Custody or Visitation by Nonparent (A.R.S. § 25-415), Grandparent or Great-grandparent Visitation (A.R.S. § 25-409)~~, Dissolution of Covenant Marriage (A.R.S. § 25-903), Legal Separation in Covenant Marriage (A.R.S. § 25-904), Paternity or Maternity (A.R.S. § 25-806), establish, enforce, register, or modify custody or parenting time (A.R.S. §§ 25-403, -411, -803(C)) and -1055), or to establish, enforce, register or modify support (A.R.S. §§ 25-320, -503, -1031 and -1033).

B. [No Change]

C. [No Change]

D. [No Change]

E. [No Change]

F. [No Change]

Rule 49. Disclosure

A. Resolution Statement. Each party shall file a Resolution Statement substantially similar to Form 4 or 5, as applicable, setting forth any agreements and a specific, detailed position the party proposes to resolve all issues in the case, without argument in support of the position. Unless otherwise ordered by the court, a Resolution Statement is not required in proceedings filed pursuant to A.R.S. § 25-409 (~~grandparent visitation~~ third party rights) or A.R.S. § 25-415 (custody by non parent).

- B.** [No Change]
- C.** [No Change]
- D.** [No Change]
- E.** [No Change]
- F.** [No Change]
- G.** [No Change]
- H.** [No Change]
- I.** [No Change]
- J.** [No Change]
- K.** [No Change]
- L.** [No Change]

Rule 91. Post-Decree/Post-Judgment Proceedings

- A.** [No Change]
- B.** [No Change]
- C.** [No Change]
- D.** [No Change]

E. Petition to Relocate or Prevent Relocation.

1. A petition to relocate or prevent the relocation of a minor child pursuant to A.R.S. § 25-408 shall be considered a request to modify a prior court order and shall comply with the provisions of this rule.
2. If a petition to relocate or to prevent the relocation of a minor child requests a change of legal custody, the parties shall comply with the provisions of paragraph ~~D~~ C.

- F.** [No Change]
- G.** [No Change]
- H.** [No Change]
- I.** [No Change]
- J.** [No Change]
- K.** [No Change]
- L.** [No Change]
- M.** [No Change]
- N.** [No Change]
- O.** [No Change]
- P.** [No Change]
- Q.** [No Change]
- R.** [No Change]
- S.** [No Change]
- T.** [No Change]

Form 1. Notice of Limited Scope Representation

Name:

Mailing Address:

City, State, Zip Code:

Daytime Phone Number:

Evening Phone Number:

Representing: ☐ Self ☐ Petitioner ☐ Respondent

State Bar Number:

ARIZONA SUPERIOR COURT, COUNTY OF _____

Case No.

Petitioner ATLAS No.

NOTICE OF LIMITED SCOPE

Respondent REPRESENTATION

The undersigned attorney enters a Notice of Limited Appearance for ☐ Petitioner
☐ Respondent _____, pursuant to Rule 9(B).

1. Counsel's appearance in this matter shall be limited in scope to the following matter(s): (Select all that are applicable, and provide detailed description of services, including any scheduled appearances, as needed.)

☐ Protective Orders

☐ Order of Protection

☐ Injunction Against Harassment

☐ Injunction Against Workplace Harassment

☐ Voluntary acknowledgment of paternity

☐ Establishment of Child Support (IV-D)

☐ Rule 32 motion (specify)

☐ U.C.C.J.E.A. Hearing

☐ Temporary Orders (Pre-Decree) (specify any limitations)

☐ Accelerated or Expedited Petition (Pre-Decree)

☐ Resolution Management Conference

☐ Arbitration

☐ Mediation

☐ Other ADR Process (specify)

- ☐ Settlement Conference
- ☐ Expedited Services Conference (specify type, e.g. child support establishment, enforcement, or modifications; custody or parenting time enforcement or modification; or other)
- ☐ Enforcement of Decree or Order (specify, as follows):
 - ☐ Child support
 - ☐ Custody & parenting time
 - ☐ Spousal maintenance
 - ☐ Property/debt issues
 - ☐ Other:
- ☐ Modification of Decree or Order (specify as follows):
 - ☐ Child support
 - ☐ Custody & parenting time
 - ☐ Spousal maintenance
 - ☐ Other:
- ☐ Emergency Petition (Post-Decree)
- ☐ Qualified Domestic Relations Order
- ☐ Filing of Foreign Decree
- ☐ Warrant to take Physical Custody
- ☐ Child Custody or ~~Parenting Time by a Non-parent~~ Visitation by a Non-parent
- ☐ Other motion and hearing thereon, specifically:
 - ☐ Attend Deposition(s) of (names)
 - ☐ Conduct the following discovery:
 - ☐ Other:
- 2. [No Change]
- 3. [No Change]
- 4. [No Change]
- 5. [No Change]